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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Unfinished Blends

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to information from U.S. Customs and Border Protection (CBP) and allegations of circumvention from the American HFC Coalition (the petitioners), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether imports of unfinished blends of hydrofluorocarbon (HFC) components R-32 and R-125 from the People's Republic of China (China) that are further processed into finished HFC blends in the United States are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4987 and (202) 482-5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce received information from CBP relating to the *Order* on HFC blends from China regarding certain blends comprised of HFC components R-32 and R-125, which closely resemble subject HFC blends from China.¹ On April 2, 2018, Commerce published a notice that it was opening a scope segment of the proceeding and provided an opportunity for interested parties to comment.² On June 12, 2018, the petitioners filed comments on the CBP entry packages;³ on June 18, 2018, Weitron, Inc. and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (collectively, Weitron) filed rebuttal comments.⁴

On August 14, 2018, the petitioners filed a request that, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiate an anti-circumvention inquiry regarding imports of unfinished blends of HFC components R-32 and R-125 from China that are further processed into finished HFC blends in the United States, which the petitioners allege are circumventing the *Order*.⁵ On August 23, 2018, Weitron submitted rebuttal comments.⁶

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China; Cold-Rolled Steel Flat Products from Japan; Hydrofluorocarbon Blends from the People's Republic of China; Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Opening of Scope Segments and Opportunity to Comment*, 83 FR 13952 (April 2, 2018) (*Opening of Scope Segments*).

³ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Scope Segment for Certain R-32/R-125 Blends," dated June 12, 2018.

⁴ See Petitioners' Letter, "Weitron's Response to American HFC Coalition's Comments on Scope Segment, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated June 18, 2018.

⁵ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Scope Investigation Regarding Certain R-32/R-125 Blends: Request to Apply Section 781(a) to Prevent Circumvention," dated August 14, 2018 (Initiation Request).

⁶ See Weitron's Letter, "Weitron's Response to Anti-Circumvention Allegation; Request to Reject, or Alternatively, Request for Extension of Time to Reply: Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated August 23, 2018 (Weitron's August 23, 2018 Response to Anti-Circumvention Allegation).

Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.⁷

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of the *Order*.

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

⁷ R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ-50, and Suva®507. R-32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R-125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R-143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁸

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of partially finished blends of HFC components R-32 and R-125 from China that are further processed in the United States to create an HFC blend that would be subject to the *Order*.

Initiation of Anti-Circumvention Proceeding

Section 781(a) of the Act and 19 CFR 351.225(g) provide that Commerce may find circumvention of an AD order when merchandise of the same class or kind as merchandise that is subject to the order is completed or assembled in the United States. In conducting anti-circumvention inquiries under section 781(a)(1) of the Act, Commerce relies upon the following criteria: (A) merchandise sold in the United States is of the same class or kind as other merchandise that is subject to an AD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the AD order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components is a significant portion of the total value of the merchandise.

A. Merchandise of the Same Class or Kind

The petitioners claim that, because the imported R-32/R-125 blend produced in China may be further processed into an HFC blend covered by the *Order* and sold in the United States

⁸ See *Order*.

it meets the requirements of section 781(a)(1)(A)(i) of the Act.⁹ Additionally, Commerce received information from CBP showing U.S. entries of merchandise similar to the HFC blends covered by the scope of the *Order*.¹⁰ Therefore, Commerce opened up a segment entitled “Certain R-32/R-125 Blends,” to place the information received from CBP on the record of the proceeding.¹¹

B. Completion of Merchandise in the United States

The petitioners contend that, in order to be sold in the United States, the imported R-32/R-125 blend, produced in China, must be further processed in accordance with regulations of the Environmental Protection Agency and AHRI Standard 700-2012 before sale in the United States.¹² Specifically, the petitioners argue that the chemical composition of the unfinished R-32/R-125 blend can be further processed into R-407A, R-407C, and R-410A.¹³ However, the semi-finished blends are imported in a composition that cannot be sold in the U.S. market and, therefore, must be adjusted after importation to be sold in the United States.¹⁴ Therefore, the requirements of section 781(a)(1)(B) of the Act are satisfied.

C. Minor or Insignificant Process

⁹ See Initiation Request at 7-9, where the petitioners identify subject blends R-407A, R-407C, and R-410A as being composed of R-32 and R-125 (R-407A and R-407C also include the additional HFC component R-134a).

¹⁰ The information received from CBP is business proprietary. See Memorandum, “Hydrofluorocarbon Blends from the People’s Republic of China: Placing Entry Documentation on the Record,” dated April 11, 2018 (HFCs CBP Memo) at Attachments; see also Petitioners’ Letter, “Hydrofluorocarbon Blends from the People’s Republic of China: Comments on Scope Segment for Certain R-32/R-125 Blends, dated June 12, 2018 (Petitioners’ June 12, 2018 Scope Comments) at 8-9.

¹¹ See *Opening of Scope Segments*, 83 FR at 13953.

¹² See Petitioners’ June 12, 2018 Scope Comments at 4 (stating “the imported blend would have to be adjusted to a 50/50 ratio. To accomplish this, an importer could add R-32 or R-125 after entry to arrive at the correct ratio prescribed by the AHRI specifications.”); see also Weitron’s Letter, “Weitron’s Response to American HFC Coalition’s Comments on Scope Segment, Antidumping Duty Order on Hydrofluorocarbon Blends from the People’s Republic of China, dated June 18, 2018 at 3 (“the semi-finished blends require further processing before they can be sold in the United States.”).

¹³ See Initiation Request at 7-9.

¹⁴ *Id.* at 8-9.

Under sections 781(a)(1)(C) and 781(a)(2) of the Act, Commerce will take into account five factors to determine whether the process of assembly or completion of merchandise in the United States is minor or insignificant. Specifically, Commerce will consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

1) Level of investment in the United States

Relying on evidence presented during the investigation to the International Trade Commission (ITC), the petitioners state that a relatively small investment is required for blending (approximately \$1 million), compared to an order of magnitude larger investment of 25 to one or even 50 to one larger investment for the manufacture of HFC components.¹⁵ Further, even accepting Weitron's statement that it has announced an investment of approximately \$14 million to construct a new refrigerant plant, the petitioners argue that such an investment is not significant in comparison to the investment required to manufacture HFC components.¹⁶

2) Level of research and development in the United States

The petitioners state that no research and development is required for blending operations and rely on evidence provided during the ITC's investigation to demonstrate that blending can be performed by relatively unskilled workers with little training.¹⁷

¹⁵ *Id.* at 14-15 and Exhibits 1 and 3 (ITC Hearing and ITC Conference transcripts).

¹⁶ *Id.* at 14-15 (citing Weitron's Scope Comments).

¹⁷ *Id.* at 14-15 and Exhibit 1 (ITC Hearing transcript).

3) Nature of the production process in the United States

Relying on evidence provided during the ITC's investigation and evidence from Commerce's investigation, the petitioners state that the production process to blend HFC components only requires a holding tank for the finished HFC blend, some pipes, and a valve and is a very simple mixing operation with no chemical reaction and no temperature change involved.¹⁸ To add a single HFC component to a R-32/R-125 blend only requires a holding tank into which the component would be introduced. Additionally, the petitioners point to evidence from the ITC's investigation that there are numerous "re-claimers" that are capable of re-creating the subject HFC blends using recycled components that have been recovered from existing equipment, "cleaning" those components, and adding R-32, R-125 or R-143a, as necessary, to bring the blend back to its original specifications.¹⁹ The petitioners also point to statements from CBP on the record of the underlying investigation that HFC blends are easy and require little equipment to mix, and that it would be possible to import HFC mixtures outside the scope of the *Order* which could be re-blended into subject merchandise.²⁰

4) Extent of production facilities in the United States

Relying on evidence from the ITC's investigation, the petitioners state that blending is a simple operation that requires minimal personnel and very basic production facilities, especially as compared to the operation of a facility that makes the components.²¹

5) Value of processing performed in the United States

The petitioners provide proprietary information as well as import data to demonstrate that the blending process represents a very small cost – just three percent – relative to the value of the

¹⁸ *Id.* at 11 and Exhibit 1 and Exhibit 2 (ITC Hearing transcript and TTI Section D Response).

¹⁹ *Id.* at 12-13 and Exhibit 3 (ITC Conference transcript).

²⁰ *Id.* at 13 and Exhibit 4 (Memorandum regarding Commerce's conference call with Customs).

²¹ *Id.* at 15-16 and Exhibit 1 (ITC Hearing transcript).

blends imported from China.²² The petitioners further argue that during the investigation Commerce determined that blending costs do not reach the level of significance to substantially transform the country of origin of the single components.²³

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise

The petitioners point to proprietary information, including the information provided by CBP, as well as import data to demonstrate that the unfinished R-32/R-125 blends are sourced from China and, given that it is a simple mixing operation, this blending does not require significant investment, research and development, or processing.²⁴ Thus, the petitioners argue that the merchandise produced in China is a significant portion of the value of the merchandise sold in the United States.²⁵

E. Factors to Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD order as part of an anti-circumvention inquiry. Section 781(a)(3)(A) of the Act addresses whether the importation of the circumventing merchandise represents a change in the pattern of trade. Based on the proprietary information on the record, including information provided by CBP, the petitioners argue that certain imports of blends made with R-32 and R-125, similar to subject merchandise, represent a change in the pattern of trade and,²⁶ as such, it appears that the only reason not to complete the blending in the country of origin is to evade application of AD duties upon importation. Section

²² *Id.* at 16-17 and Exhibit 5 and Exhibit 6 (a proprietary agreement and Census import statistics).

²³ *Id.* at 17; *see also Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying Issues and Decision Memorandum at Comment 4.

²⁴ *Id.* at 17-19 (citing HFCs CBP Memo and Attachments) and Exhibit 5 and Exhibit 6 (a proprietary agreement and Census import statistics).

²⁵ *Id.* at 17-19.

²⁶ *Id.* at 19-21 (citing HFCs CBP Memo and Attachments).

781(a)(3)(C) of the Act addresses whether imports into the United States of the parts or components produced in the foreign country increased after the initiation of the investigation. The petitioners state that published import statistics do not reveal the extent to which R-32/R-125 blends are imported from China and completed and sold in the United States; however, the petitioners rely on proprietary information and information from the ITC's investigation to demonstrate that there is a large capability for numerous facilities to adopt this approach, which could result in a negation of the effect of the *Order*.²⁷

Conclusion

Based on the information on the record, we determine that there is sufficient information to warrant an initiation of an anti-circumvention inquiry, pursuant to section 781(a) of the Act and 19 CFR 351.225(g). Commerce will determine whether the merchandise subject to the inquiry (as described in the "Merchandise Subject to the Anti-Circumvention Inquiry" section above) is circumventing the *Order* such that it should be included within the scope of the *Order*.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. Before issuance of any affirmative determination, Commerce intends to notify the ITC of any proposed inclusion of the inquiry merchandise under the *Order* in accordance with section 781(e)(1)(A) of the Act. In

²⁷ See Initiation Request at 21 and Exhibit 3 and Exhibit 4 (ITC Conference transcript and Memorandum regarding Commerce's conference call with Customs).

accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: June 12, 2019.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

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